IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated.: 06.09.2007

CORAM:

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Second Appeal No.754 of 2007

1. Habibunnisa Beevi
2. Ajmath Beevi
3. Sahfa Ath Ahamath
   all are represented by Power Agent
   Khaliquzzaman .. Petitioner/Appellants/Appellants

-Vs-

Perumal .. Defendant/Respondent/Respondent

APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree, dated 29.01.2007, made in A.S.No.50 of 2006 on the file of the Subordinate Judge, Chidambaram, confirming the judgment and decree dated 01.03.2006 made in O.S.No.1142 of 1999 on the file of the District Munsif Court, Parangipettai.

For Appellants : Mr.M.Sudhakar

J U D G M E N T

The unsuccessful plaintiff in O.S.No.149 of 1999 on the file of the District Munsif Court, Parangipettai, who lost the first appeal in A.S.No.50 of 2006 on the file of the Subordinate Judge, Chidambaram has filed the above second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The case of the plaintiffs in brief is as follows :

The plaintiffs 1 and 2 are sisters. The third plaintiff is the husband of the second plaintiff. The entire extent of 5.06 acres in the first item of the suit property belongs to the plaintiffs. The suit properties totally measuring an extent of 5.28 acres are situated in two different survey numbers. The defendant is the recorded cultivating tenant of the suit properties under the plaintiffs. It is the case of the plaintiffs that on 9.5.1992, there was a panchayat. The husband of the first plaintiff participated in the Panchayat on behalf of the first

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plaintiff; the defendant also participated in the Panchayat; in the Panchayat it was decided that the first plaintiff should give Rs.27,500/- before 15.6.1992, that out of 5.28 acres, the defendants should take one acre as bonus and the defendant agreed to surrender possession of the suit properties i.e. an extent of 4.28 acres to the first plaintiff, the agreement was reduced into writing and the same was signed by the husband of the first plaintiff and the defendant and Panchayatars attested the same. It is the further case of the plaintiff that on 10.5.1992, the defendant received a sum of Rs.500/- and in acknowledgment of the same, affixed his signature; On 17.6.1992, the defendant received a further sum of Rs.200/- and in acknowledgment of the same, affixed his signature and further agreed to surrender and give possession of 4.28 acres and again on 29.6.1992 another sum of Rs.200/- was paid to the defendant and the defendant made an endorsement acknowledging the same. In paragraph 3 of the plaint, it is stated as follows:

> "Immediately after June 1993, the first plaintiff had to go to abroad. Therefore, it was agreed between the first plaintiff and the defendant that the first plaintiff's husband after returning from abroad after a period of three years." (It does not convey any meaning at all.)

It is the further case of the plaintiff that in spite of several demands, the defendant did not surrender the possession of the suit properties. Hence a legal notice dated 27.12.1996 was issued to the defendant, which was replied by the defendant with false averments. In such circumstances, the plaintiffs have filed a suit for recovery of possession and for future mense profits contending that from the date of execution of the agreement dated 9.5.92, the defendant ceased to be a tenant and there is an implied surrender of possession by the defendant, the plaintiffs are prepared to pay the balance amount of Rs.26,300/- to the defendant.

4. The suit was contested by the defendant inter alia contending that the agreement dated 9.5.1992 is not true and he had never agreed to surrender possession of an extent of 4.28 acres; the second plaintiff has no authority to enter into an agreement on behalf of the plaintiff. The defendant has not received any amount under the alleged agreement. The allegation that the period was extended by three years is denied. The defendant further contended that he was made to sign in four places in a plain paper by the third plaintiff under the threat of dire consequences. With the help of unruly persons, the third plaintiff got the signatures of the defendant under coercion and threat. The defendant did not put his signature after knowing the contents of the document and he did not intend to agree to surrender possession of 4.28 acres and agree to receive Rs.27,500/-. The further contention of the defendant was that the alleged agreement was an inchoate one and there was no surrender of leasehold right by the defendant under the document; there was not even an offer to pay the alleged balance amount; the suit is barred by limitation for the relief of specific performance and the Civil Court has no jurisdiction to entertain the suit.

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5. After framing appropriate issues, the suit was taken up for trial and during trial on the side of the plaintiffs, the power of attorney agent of the plaintiffs viz., Khaliquezzaman, who is the husband of the first plaintiff, was examined as P.W.1 and one Veerappan was examined as P.W.2. Exhibits A1 to A10 were marked. On the side of the defendants, the defendant has been examined as D.W.1, but no document has been marked.

6. The Trial Court on a careful consideration of the oral and documentary evidence adduced in the case, held that the defendant is cultivating the suit properties as a tenant and the Panchayat pleaded by the plaintiffs is true on the basis of the testimony of P.W.2. Ex.A.4 agreement was found to contain the signature of defendant, but, it was held that Ex.A.4 agreement was not entered into between the plaintiffs and the defendant and since it is barred by limitation, the agreement is invalid. The Trial Court further found that the plaintiffs are not entitled to seek recovery of possession but they are only entitled to seek the remedy before the Revenue Court. It is further found that the first plaintiff's husband had no authority to enter into an agreement with the defendant on behalf of the plaintiffs; the Trial Court also recorded the finding that the signatures in Ex.A.4 Agreement and in the endorsements Ex.A.5 to Ex.A.7 are the signature of the defendant. But, ultimately holding Ex.A.4 agreement as invalid and barred by limitation, dismissed the suit. Being aggrieved by that, the plaintiffs filed an appeal in A.S.No.50/2006 before the Subordinate Court, Chidambaram.

7. The lower Appellate Court concurred with the findings of the Trial Court and held that Ex.A.4 contains the signature of the defendant and the Lower Appellate Court basing reliance on Sections 187, 196 and 197 of the Indian Contract Act held that the first plaintiff has impliedly ratified the act of her husband but at the same time held that Ex.A.4 agreement was not entered into on behalf of the plaintiffs 2 and 3. The Lower Appellate Court has pointed out that there is nothing in the agreement to show that the defendant had an intention to enter into an agreement with the plaintiffs 2 and 3 and on that basis held that there was no agreement between the plaintiffs 3 and 4 and the Lower Appellate Court further held that the agreement is vague since in Ex.A.4, one acre of land to be given to the defendant has not been described and it has not even been stated that the one acre is included in the total extent of 5.28 acres. For the above said reasons, the Lower Appellate Court held that Ex.A.4 cannot be said to be an agreement between the defendant and the plaintiffs 2 and 3. The Lower Appellate Court further held that under Ex.A.4, the defendant had agreed to surrender possession only on a future date, that too, on performance of certain obligation by the first plaintiff and therefore it could not be said that the defendant ceased to be a tenant on the date of agreement and unless and until the promises are performed by either party the defendant remains only to be a tenant and holding so the lower Appellate Court dismissed the appeal. Being aggrieved by that the plaintiffs have filed the above Second Appeal.

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8. Heard Mr.M.Sudhakar, learned counsel for the appellants.

9. The learned counsel for the appellants submitted that though Ex.A.4 agreement has been entered into between the defendant and the first plaintiff and the first plaintiff had not signed Ex.A.4 agreement but her husband alone has signed on her behalf the subsequent execution of the power of attorney deed by all the plaintiffs joining together will amount to ratification of the act of the first plaintiff's husband entering into Ex.A.4 agreement; though Ex.A.4 agreement does not specifically mention that the agreement has been entered into between the defendant and the plaintiffs 2 and 3 also since the property belonging to the plaintiffs 2 and 3 is also mentioned in Ex.A.4 and the plaintiffs 2 and 3 have not only executed the power of attorney deed appointing the husband of the first plaintiff as their power agent but also have authorised him to file a suit that will amount to ratification under Section 197 of the Indian Contract Act. The learned counsel further submitted that in view of the ratification Ex.A.4 ought to be held as valid and if Ex.A.4 is held to be valid then there is an implied surrender of possession by the defendant. Therefore according to the learned counsel the defendant ceased to be a tenant in respect of the suit property and the suit for recovery of possession is maintainable and the same ought to have been decreed. He further contended that eventhough the defendant is a recorded cultivating tenant he can surrender his leasehold right and though the balance amount agreed to be paid under Ex.A.4 had not been paid the defendant can recover the balance amount only by filing a suit but he cannot resist the suit for recovery of possession. The learned counsel for the appellants relied upon the following decisions in support of his contention viz.,:

1. 2000(9) SCC 339 (R.Kanthimathi and another vs. Beatrice Xavier)
2. AIR 2007 Supreme Court 2059 (Tara Chand v. Sagarbal alias Chalyalibai)

In paragraph 6 of the decision reported in 2000(9) SCC 339 (R.Kanthimathi and another vs. Beatrice Xavier), it is observed as follows :

> "Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when the appellants were inducted into tenancy it only means both agreed that their relationship was to be that of landlord and tenant. Later when the landlord decided to sell this property to the tenant and the tenant agreed by entering into agreement, they by their positive act changed their relationship as purchaser and seller. When the seller-landlord accepts the sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change, their relationship of landlord=tenant ceases."

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In AIR 2007 Supreme Court 2059 (Tara Chand v. Sagarbal alias Chalyalibai), the Apex Court in paragraphs 21 and 33 has observed as follows :

> "21. Appellant has been allowed to use the ground floor of the premises in question in lieu of interest. Respondent as owner of the property was to pay the house tax and other taxes. The deed clearly stipulates the period on the expiry whereof, the right of redemption would vest in the mortgagor. Prior to the expiry of the sale period, the respondent could not claim recovery of possession. He could not have filed a suit for eviction under the 1961 Act even if one of the other conditions laid down therefor were fulfilled. The terms of tenancy was fixed. The mortgagee was to vacate the house and possession thereof after 10 years on payment of the entire mortgage money. The stipulations contained in the deed do not stop there. It conferred a right upon the mortgagee to get the house auctioned and to recover the amount advanced is not paid back. Other right of the appellant as a mortgagee and not as a tenant. The stipulations contained in the mortgage deed, therefore, are such that they would lead to an inference that the tenancy was impliedly surrendered by the applicant."
>
> 33. In this case also, there is a clear intention on the part of the mortgagee only to retain his interest in that capacity and not as a tenant. The parties altered their position. A new relationship was created."

10. I have carefully considered the submissions made by the learned counsel for the appellants and the materials on record.

11. At the outset, it has to be pointed out that before considering the above said submissions of the learned counsel for the appellants, it has to be seen as to whether Ex.A.4 agreement could have been ratified by the plaintiffs. Though the lower Appellate Court by relying upon Sections 187, 196 and 197 of the Indian Contract Act has held that the first plaintiff has impliedly ratified the act of his husband, in the considered view of this Court, such a finding is not correct. The said finding of the Lower Appellate Court and the submission of the learned counsel for the appellants relating to ratification has to be considered in the light of the Section 200 of the Indian Contract Act. Section 200 of the Indian Contract Act reads as follows:

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"Ratification of unauthorised act cannot injure third person.

An act done by one person on behalf of another, without such other person's authority, which, if done with authority would have the effect of subjecting a third person to damages, or of terminating any right to interest of a third person cannot, by ratification, be made to have such effect.

Illustrations

(a) A, not being authorised thereto by B, demands, on behalf of B, the deliver of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three months' notice, C, an unauthorised person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A."

The principle underlying Section 200 is that ratification must not prejudice third parties. Ordinarily, ratification is equivalent to prior authority. But, while the interest of the third parties are likely to be affected, the principle of ratification cannot be applied to the transaction. A reading of illustration 'b' to Section 200 makes this position very clear. If the effect of the ratification is to give a ratifier a right of suit in respect of the act committed, it is not open to the principal to ratify. It is well settled that rights of property cannot be changed retrospectively by ratification of an act inoperative at the time.

12. If Ex.A.4 agreement is considered in the light of the provisions contained in Section 200 of the Indian Contract Act, it could be easily held that Ex.A.4 is not binding on the defendant. Admittedly, on the date of Ex.A.4, the husband of the first plaintiff was not authorised by her to enter into an agreement on her behalf and the agreement affects the valuable right of the defendant available to him under the Tamil Nadu Cultivating Tenants Protection Act. Admittedly, Ex.A.4 has been entered into only between the first plaintiff and the defendant and on behalf of the first plaintiff her husband has signed in Ex.A.4 but a reading of Ex.A.4 shows that the extent of 5.06 acres in Survey No.169/4B and an extent of 22 cents in Survey No.166/6C are stated to be belonging to the first plaintiff whereas the said statement itself is incorrect since, the first plaintiff is not the sole owner of the entire extent of 5.28 acres. The second plaintiff is admittedly entitled to an extent of 1.33 acres and the third plaintiff is entitled to 0.66 acres. There is no recital in Ex.A.4 to the effect that the husband of the first plaintiff has entered into an agreement with the defendant on behalf of the plaintiffs 2 and 3 also. Though the plaintiffs 1 to 3 have executed a power of attorney deed

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constituting the first plaintiff's husband as their power of attorney agent to file a suit and the suit has also been filed for recovery of possession, the subsequent execution of the power of attorney deed, in the considered view of this Court cannot ratify the act of the first plaintiff's husband entering into Ex.A.4 agreement. Since Ex.A.4 agreement affects the valuable rights of the defendant. Therefore, in view of the provisions contained in Section 200 of the Indian Contract Act Ex.A.4 agreement has to be held as invalid. Further, it has to be pointed out that, Ex.A.4 agreement is as vague as vagueness could be as it is not stated in Ex.A.4 as to which portion measuring an extent of one acre out of the total extent of 5.28 acres of the suit property was agreed to be given to the defendant.

13. Admittedly the entire amount agreed to be paid to the defendant as per Ex.A.4 Agreement had not been paid even as on date. The plaintiffs want to take undue advantage of Ex.A.4. Equity is not in favour of the plaintiffs but definitely it lies in favour of the defendant. Therefore, on the ground of equity also, the plaintiffs case of implied surrender cannot be accepted.

14. The ratio laid down in 2000 (9) Supreme Court Cases 339 is not applicable to the facts of this case. In that case, the agreement of sale entered into between the landlord and the tenant was found to be binding on them and the landlord in that case has accepted part of the sale consideration and had executed the agreement and hence the Apex Court held that the relationship is changed and the relationship of landlord and tenant ceased. In the case on hand, it has been found that Ex.A.4 is not binding on the defendant and therefore the above ratio is not applicable to the case on hand.

15. Similarly, the ratio laid down by the Apex Court in AIR 2007 Supreme Court 2059 is not applicable to the facts of this case. In that case, the tenant became the mortgagee of the tenanted premises belonging to the mortgagor/landlord. The mortgagee/tenant was to vacate the house and possession handed over to the mortgagor after ten years on payment of the entire mortgage money. The stipulations contained in the mortgage deed also conferred a right upon the mortgagee-tenant to get the house auctioned and to recover the entire mortgage amount in the event of non payment of the mortgage money. Only on the consideration of the said stipulation the Apex Court held that the tenancy was impliedly surrendered by the tenant. The facts of the case on hand are totally different. Therefore the ratio laid down in the said decision do not apply to the the facts of this case.

16. In the abstract, a substantial question of law appears to arise on the basis of the submissions made by the learned counsel for the appellants but, in fact, on a consideration of the factual background of this case, no substantial question of law arises in the above Second Appeal. Hence this Court finds no reason to interfere with the concurrent findings of fact.

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17. In such view of the matter the above second appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Subordinate Court, Chidambaram.
2.The District Munsif Court, Parangipettai.

1 CC To Mr.V.Krishnan, Advocate, SR NO.56186.

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